IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1887 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI CHHOTABHAI & 1 - Appellant(s)
Versus
ABDUL GAFUR & 2 - Defendant(s)

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Appearance :

NOTICE NOT RECD BACK for Appellant(s) : 1 - 2.MR KAMAL M SOJITRA for Appellant(s) : 1,(MR SD PATEL) for Appellant(s) : 2,
NOTICE SERVED for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/02/2007

ORAL JUDGMENT

Original claimant has preferred this appeal under section 110-D of the Motor Vehicles Act, 1939 [hereinafter referred to as 'the Act'] for seeking

enhancement of the compensation. The Motor Accident Claims Tribunal [Aux.] Surendranagar, by its judgment and award dated 19/2/1990 in M.A.C. Petition No. 187 of 1985 awarded Rs.21,000/- to the appellant together with proportionate costs and interest at the rate of 12% p.a., from the date of petition till realization.

2. The accident in question took place on 18th May 1984. Claimant of Claim Petition No. 44 of 1985 which arose from the same accident, namely Surabhai Vajabhai, was going in his matador bearing registration No. GTQ 6444 from Limbdi to Salaya. The deceased father of the claimant accompanied him as a Cleaner. The matador developed some mechanical defect and, therefore, it was parked on the left hand side of the road to carry out the necessary repair. Deceased was doing the repairing work. It is the say of the claimant that it was around mid-night and, therefore, the back lights of the matador were switched on; at that time one motor truck bearing registration No. GTW 3384 arrived there from Limbdi side and it dashed against the rear portion of the stationary vehicle. As a result of the collision, driver of matador, namely Surabhai received injuries; whereas cleaner Chhotabhai lost his life. The appellant, therefore, filed the aforesaid claim petition to seek compensation for the death of his father.

2.1. Before the Tribunal, the claim was resisted by respondent no. 3 –

Insurance Company by filing written statement at Exh. 13. It denied the averments made in the claim petition. The parties led evidence and on the basis of the material produced before it, the Tribunal held that the driver of the truck was negligent to the extent of 70%, whereas driver of the stationary vehicle, namely matador was negligent to the extent of 30%. The Tribunal also held that the appellant deserved compensation of Rs.30,000/-. However, due to 30% negligence on the part of the driver of the matador, the Tribunal deducted Rs.9,000/- from the award and granted compensation of Rs.21,000/-. Hence, this appeal.

3. I have heard Mr. Kamal Sojitra, learned advocate for the appellant. The respondents though served, have not appeared. It is the submission of Mr. Sojitra that the Tribunal has committed error in holding that the driver of matador was negligent to the extent of 30%. He has further submitted that the multiplier applied by the Tribunal is on lower side. He has submitted that the loss of dependency benefit determined by the Tribunal is also on lower side.

4. I have carefully considered the submissions of Mr. Sojitra and I have also closely perused the judgment of the Tribunal. It appears from the judgment of the Tribunal itself that all the necessary care was taken by the driver of the matador to see that no untoward incident took place. It was night

time. However, the vehicle was parked on its correct side. The rear lights were kept on and usual barrier by placing stones was also made. This version of the claimant has been found to be true by the Tribunal. However, it has held the driver of matador 30% negligent because the vehicle was parked on the highway. It may be noted here that the vehicle had developed some mechanical defect which was required to be repaired. The vehicle was parked on its correct side. The truck was having enough space to overtake this stationary vehicle. The driver of the truck ought to have exercised due care to see that there was vehicle parked on the left side of the road and its rear lights were on. However, the truck driver did not even exercise the ordinary care to notice the vehicle and to slow down his truck and to avoid any collision. It, therefore, clearly appears that the entire fault was that of the truck driver and no blame could be attributed to the driver of the matador. Such finding of the Tribunal is erroneous and it is required to be quashed and set aside and it is hereby quashed and set aside.

4.1. So far as the quantum is concerned, the Tribunal has considered the age of the deceased about 65 years at the time of accident and has applied the multiplier of 5. However, considering the fact that the deceased was physically fit and was able to do strenuous job of cleaner, the multiplier of 8 could have been proper. Hence the multiplier is increased to 8.

4.2. The salary of the deceased at the time of accident was Rs.600/-.

The Tribunal has deducted it by half to determine the loss of dependency benefit. The deduction made by the Tribunal is more since the deceased could have reasonably spent about Rs.200/- for himself per month and balance amount he would have given to his family. Therefore, the loss of dependency benefit could be worked out at Rs.400/- per month i.e. Rs.4,800/- per year and applying multiplier of 8, the amount comes to Rs.38,400/-. The Tribunal has already awarded Rs.18,000/- on this head. Therefore, the appellant is entitled to receive additional amount of Rs.20,400/- under this head. The deduction made by the Tribunal is not proper and the appellant is entitled to receive Rs.30,000/- as awarded by the Tribunal and additional amount of Rs.20,400/- under the head of loss of dependency benefit awarded by this Court, together with proportionate costs and interest as awarded by the Tribunal. The appeal is partly allowed.

5. Before parting with the judgment, it is necessary to note that some of the important documents like the evidence of driver of the matador, the panchnama, the FIR and the judgment of the Criminal Court have been destroyed by the concerned Tribunal inspite of the fact that appeal was pending before this Court.

5.1. So far as the Gujarat Criminal Manual is concerned, Chapter XXI contains the provisions regarding Records, Custody and Return of Records.

Part-I of the said Chapter contains provisions with regard to Maintenance and Destruction of Records. Rule 361 provides that the record of a substantive criminal proceeding should not be considered due for despatch to the record room until the expiry of the period of appeal or revision application and, if any appeal or revision application has been instituted, until after the disposal of appeal or revision application. Rule 363 provides for classification of records and marking and filing thereof as A, B, C, D. Clause (3) of rule 363 prescribes that the deposition, documents produced in evidence, etc., are not to be preserved for a long time and they should be marked "C" and kept in file "C". Clause (4) thereof states that the papers in file C shall be destroyed after 5 years. Clause (6) of rule 363 states that period prescribed in clause (5) for destruction of the record shall be computed from the date of the final decision of the case in the trial Court when no appeal or revision application has been filed and from the date of the final decision of the appellate or revisional Court when an appeal or a revision application has been filed. These are the relevant provisions of the Criminal Manual.

5.2. So far as the Civil Manual is concerned, Chapter XXIV deals with records. Rule 463 prescribes arrangement of records in files. File C contains 5 items, first being the documents admitted in evidence. Rule 490 deals with preservation and destruction of records. It prescribes that C file shall be destroyed at the end of 12 years. Clause (2) of the said rule states that the

period prescribed in Clause (1) of the said rule, shall be calculated from the date of the final decree or order and in case of appeal or revision applications, from the date of the final decree or order of the appellate or revisional Court.

6. Thus, considering the provisions of both, Criminal as well as Civil Manuals, there was no reason for the Tribunal to destroy the aforesaid documents. Those documents are very important for deciding the appeal. This Court found it difficult to give judgment and it had to simply rely on the partial reproduction of these documents made in the judgment. It is, therefore, a matter of grave concern how these important documents have been destroyed by the office of the concerned Tribunal. The Registrar General is, therefore, directed to make a detailed inquiry and to take appropriate action against the defaulting officers and report to this Court.

Registry to re-transmit R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.